Allied Mechanical, Inc. *and* United Steelworkers of America, AFL–CIO–CLC. Cases 31–CA–26120, 31–CA–26135, 31–CA–26184, 31–CA–26194, 31–CA–26276, and 31–RC–8202

November 19, 2004

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

On December 19, 2003, Administrative Law Judge Lana H. Parke issued the attached decision.[1] The Respondent filed exceptions and a supporting brief. The General Counsel and Charging Party each filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[2] and briefs and has decided to affirm the judge's rulings, findings,[3] and conclusions as modified below and to adopt the recommended Order as modified below.[4]

These combined representation and unfair labor practice cases arise in the context of an election conducted in a bargaining unit of production, maintenance, shipping and receiving, and programmer employees at the Respondent's Ontario, California facility on March 6. The Union lost the election and thereafter filed election objections and several unfair labor practice charges regarding the Respondent's conduct before, during, and after the election.

The judge found that the Respondent committed several unfair labor practices and recommended sustaining three of the Union's election objections and overruling three others.[5] The judge further found that the Respondent's unlawful and objectionable conduct impeded the election process and prevented the possibility of ensuring a fair rerun election. The judge recommended ordering the Respondent to bargain with the Union pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). As set forth below, we affirm the judge's unfair labor practice findings and sustain the Union's Objection 9 regarding the Respondent's enforcement of its posting policy during the critical period. We further find, however, that the coercive effects of the Respondent's unlawful conduct can be satisfactorily mitigated, and a fair rerun election ensured, by the use of the Board's traditional remedies. We accordingly reverse the judge's finding that a *Gissel* bargaining order is warranted. We instead direct a second election.

1. We find, for the reasons set forth in the judge's decision, that the Respondent violated Section 8(a)(3) and (1) by disciplining and discharging employee Timothy Hays on January 23, and by issuing a reprimand to employee Marcello Pinheiro on January 31. We also agree with the judge that the Respondent violated Section 8(a)(1) by threatening employee Pablo Rodriguez after the election with unspecified reprisals.

In addition, we agree with the judge that the Respondent's discriminatory enforcement of its posting policy during the critical period not only violated Section 8(a)(1) but also interfered with employee free choice. As more fully set forth in the judge's decision, the Respondent permitted posting of nonwork-related notices at a tool crib and on restroom walls. The Respondent, however, removed union literature posted in these same locations. By removing union literature from employee posting areas in its facility while permitting other nonwork-related notices to remain, the Respondent violated the Act. *Fixtures Mfg. Corp.*, 332 NLRB 565 (2000). In

[1] All dates refer to 2003 unless otherwise indicated.

[2] No exceptions were filed to the judge's dismissal of the 8(a)(3) and (1) allegations regarding employee Marcello Pinheiro's postelection performance review, reduction of hours, and selection for lay off. There were also no exceptions filed to the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) by issuing written discipline to Pinheiro on March 25. Likewise, there were no exceptions filed to the judge's finding that the Respondent violated Sec. 8(a)(1) of the Act when, after the election, it ascribed its preelection reduction in employees' hours to retaliation for employees' union activity.

On November 4, 2004, the Respondent withdrew its exception to the judge's finding that it violated Sec. 8(a)(3) and (1) by disciplining and discharging employee Walter Reddoch. The Respondent also filed a motion to reopen the record or for special leave to file a supplemental brief on the propriety of a *Gissel* bargaining order in light of changed circumstances. The General Counsel and the Charging Party opposed the motion. Given our disposition of the *Gissel* issue herein, we deny as moot the Respondent's motion.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[4] We have also substituted a new notice to conform it to the language of the Order.

[5] The judge recommended sustaining the Union's Objection 2 regarding Supervisor Cliff Conley's conduct on election day, which allegedly created an impression of surveillance, the Union's Objection 5 concerning the Respondent's reprimand of employee Pinheiro during the critical period, and the Union's Objection 9 concerning the Respondent's enforcement of its posting policy during the first few weeks of the critical period. In the absence of exceptions, we adopt pro forma the judge's recommendations to overrule the Union's Objections 1, 3, and 4.

addition, by removing union literature during the critical period, the Respondent denied its employees access to an important medium of communication during the campaign. For this reason, the Respondent's discriminatory enforcement of its posting policy is objectionable and warrants setting aside the election. *Waste Management, Inc.*, 330 NLRB 634 fn. 2, & 635–636 (2000); *Ford Motor Co.*, 315 NLRB 609, 615 (1994). Accordingly, we sustain the Union's Objection 9. In light of this ruling, we find it unnecessary to pass on the Union's Objections 2 and 5.[6]

2. Under the circumstances of this case, we find, contrary to the judge, that a *Gissel* bargaining order is not necessary. We find that the Board's traditional cease-and-desist and other affirmative remedies including posting of a notice will sufficiently address the Respondent's misconduct to ensure that a fair rerun election can be held, and that these remedies and the holding of a rerun election will satisfactorily protect and restore employees' Section 7 rights.

[6] Unlike his colleagues, Member Schaumber would overrule the Union's Objection 9 and, further, would reach and overrule the Union's Objections 2 and 5.

Objection 2 alleges that Supervisor Conley's continued presence where employees exited the Respondent's facility on their way to the polling place on the day of the election created an impression of surveillance and interfered with employee free choice. In Member Schaumber's view, Supervisor Conley's conduct on election day did not create an impression of surveillance. Member Schaumber notes that Conley was never closer than 150 feet to the polling location and there was no evidence that any employee had to pass by Conley in order to reach the polling place. For these reasons, Member Schaumber would overrule Objection 2.

Objection 5 alleges that the Respondent's unlawful reprimand of employee Pinheiro during the critical period interfered with employee free choice. Although Member Schaumber agrees with his colleagues that the Respondent violated Sec. 8(a)(3) and (1) by reprimanding employee Pinheiro during the critical period, he is of the view that Pinheiro's reprimand would not reasonably tend to interfere with employee free choice because it was not widely disseminated among unit employees. Therefore, Member Schaumber would overrule Objection 5.

Objection 9 alleges that the Respondent discriminatorily enforced its posting policy during the critical period by removing union literature from posting places where nonwork-related notices were allowed to remain. This conduct was also alleged in the complaint as an unfair labor practice. Member Schaumber would find that the Respondent's removal of pro and antiunion fliers from the restroom and tool crib walls where other nonwork-related notices were posted during the first 2 weeks of the critical period was not a violation of the Act nor was it objectionable. He notes that throughout the critical period employees could post any flier, regardless of its content, on a bulletin board in the employee breakroom and the Respondent did not disturb these postings. Moreover, for approximately 5 weeks before the election, the Respondent allowed all campaign-related literature, regardless of its content, as well as nonwork-related notices, to remain posted in its facility. In these circumstances, Member Schaumber would find that the Respondent's enforcement of its posting policy would not reasonably tend to interfere with employees' ability to communicate among themselves about unionization nor interfere with employee free choice; accordingly, he would dismiss this complaint allegation and overrule Objection 9.

AMENDED CONCLUSIONS OF LAW

1. Respondent violated Section 8(a)(3) and (1) of the Act by

(a) discriminatorily issuing written disciplinary notices to Timothy Hays and Walter Reddoch on January 23, 2003;

(b) discriminatorily discharging Timothy Hays and Walter Reddoch on January 23, 2003; and

(c) discriminatorily disciplining Marcelo Pinheiro on January 31, 2003, and on March 25, 2003.

2. Respondent violated Section 8(a)(1) of the Act by

(a) impliedly and coercively telling an employee that Respondent had retaliated against employees by reducing employees' hours;

(b) threatening an employee with unspecified reprisals by telling him he would lose by supporting the Union; and

(c) discriminatorily prohibiting the posting of union literature.

3. The unfair labor practices set forth above affect commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

4. Respondent did not engage in any unfair labor practices other than those found above.

ORDER

The National Labor Relations Board orders that the Respondent, Allied Mechanical, Inc., Ontario, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified below.

1. Delete paragraph 2(a) and reletter the subsequent paragraphs.

2. Substitute the attached notice for that of the administrative law judge.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the election held on March 6, 2003, in Case 31–RC–8202 is set aside and that the case is remanded to the Regional Director for Region 31 for the purpose of conducting a new election.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election,

including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by United Steelworkers of America, AFL–CIO–CLC.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C. November 19, 2004

Peter C. Schaumber, Member

Dennis P. Walsh, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the United Steelworkers of America, AFL–CIO–CLC or any other labor organization.

WE WILL NOT discipline or otherwise discriminate against any of you for supporting the Union or any other labor organization.

WE WILL NOT discriminatorily prevent you from posting union literature.

WE WILL NOT tell any of you that we have retaliated against you for your support of the Union.

WE WILL NOT threaten any employee that he will lose by supporting the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Timothy Hays and Walter Reddoch full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Timothy Hays and Walter Reddoch whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of Board's Order, remove from our files any reference to the unlawful discipline and discharges of Timothy Hays and Walter Reddoch, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discipline and discharges will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discipline of Marcelo Pinheiro, and WE WILL, within 3

days thereafter, notify him in writing that this has been done and that the discipline will not be used against him in any way.

ALLIED MECHANICAL, INC.

Michelle Youtz Scannell and *Christy Kwon, Attys.*, for the General Counsel.
Steven D. Atkinson, Atty. (Atkinson, Andelson, Loya, Ruud & Romo), of Los Angeles, California, for the Respondent.
Robert J. Stock, Atty. (Gilbert & Sackman), of Los Angeles, California, for the Charging Party.

DECISION, REPORT AND RECOMMENDATION ON OBJECTIONS

STATEMENT OF THE CASE

LANA H. PARKE, Administrative Law Judge. This consolidated case was tried in Los Angeles, California, on September 8 through 12, 2003,[1] pursuant to a consolidated complaint and notice of hearing in Cases 31–CA–26120, 31–CA–26135, 31–CA–26184, 31–CA–26194, and 31–CA–26276 and Report on Objections in Case 31–RC–8202, order directing hearing, notice of hearing, and order consolidating cases issued by the Regional Director for Region 31 of the National Labor Relations Board (Region 21) on June 26 and August 21, respectively. The consolidated complaint is based on charges filed by United Steelworkers of America, AFL-CIO-CLC (the Union or Petitioner) against Allied Mechanical, Inc. (Respondent).

The consolidated complaint alleges Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by discharging employees Walter Reddoch and Timothy Hays (Reddoch and Hays, respectively), by disciplining employee Marcelo Pinheiro (Pinheiro), by giving Pinheiro an unfavorable performance ranking in "attitude," by reducing Pinheiro's working hours, by selecting Pinheiro for layoff, and by undertaking these actions because said employees had engaged in union and other protected concerted activities and to discourage employees from engaging in such activities.

The consolidated complaint further alleges Respondent independently violated Section 8(a)(1) of the Act by threatening an employee with retaliation because of his union activities and by promulgating and enforcing an ad hoc rule prohibiting union literature posting, and thereby interfering with, restraining, and coercing employees in the exercise of their Section 7 rights.

As remedy for the above alleged unfair labor practices, the General Counsel seeks an order requiring Respondent to bargain with the Union (Gissel remedy).[2]

On March 13, the Petitioner filed Objections 1 through 10 to the representation election conducted March 6. The Petitioner thereafter withdrew Objection Nos. 7 and 8. In its post-hearing brief, the Petitioner withdrew Objection Nos. 6 and 10, modified Objection No. 1 to eliminate Jose L. Rodriguez from the objection, and modified Objection No. 3 to eliminate all allegations except with respect to Frederico Hernandez's raise. The remaining objections allege the Employer engaged in certain conduct during the critical laboratory period that interfered with the election. Objections 4, 5, and 9 correlate to allegations of the complaint, while objections 1, 2, and 3 concern independent allegations of the Employer's misconduct.

Issues

1. Did Respondent violate Section 8(a)(3) and (1) of the Act by the following conduct:
   (a) On January 23, terminating Reddoch and Hays.
   (b) On January 31, disciplining Pinheiro?
   (c) In February, issuing Pinheiro a performance review with a low ranking in "attitude?"
   (d) On March 6, reducing the working hours of Pinheiro?
   (e) On March 25, issuing a written discipline to Pinheiro?
   (f) On April 8, selecting Pinheiro for lay-off?
2. Did Respondent independently violate Section 8(a)(1) of the Act by the following conduct:
   (a) On January 28, promulgating and enforcing an ad hoc rule prohibiting posting of union literature?
   (b) In March, threatening an employee with unspecified retaliation because of union activities?
   (c) In March, enforcing an ad hoc rule prohibiting posting of union literature?
3. Did Respondent engage in conduct as alleged above and/or other conduct alleged in the Union's objections 1, 2, and 3 so as to interfere with the election herein?

On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation, with a facility in Ontario, California (the facility), manufactures machine parts.[4] During the calendar year preceding the complaint, a representative period, Respondent purchased and received at its facility goods, supplies, and materials valued in excess of $50,000 directly from suppliers located outside the State of California. Respondent admitted and I find it to be an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union to be a labor organization within the meaning of Section 2(5) of the Act.[5]

[1] All dates are in 2003 unless otherwise indicated.
[2] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).
[3] The record includes two post-hearing documents, Respondent's Exh. No. 24 and 25: requests to proceed filed with the Board by the Union in Case 31–RC–8202 on January 28 and February 7, respectively.
[4] Respondent is a "job shop" as distinguished from a "production shop," manufacturing individual or custom work rather than large quantity runs.
[5] Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Alleged Violations of Section 8(a)(3)

1. The discipline and termination of Hays

Employed by Respondent February 19, 2001 to January 23, Hays contacted the Union in December 2002, arranged and attended union meetings with other employees on January 7, 14 and 16, and became a member of the employee organizing committee. On January 20, Hays discussed the upcoming January 23 union meeting with 10 to 15 employees and continued to discuss it with employees in the days following. Some of the discussions took place near Hays's work area where Miguel Sedano, who on one occasion told Hays and a coworker to get back to their work areas, could observe him.[6]

On January 23, Slater informed Bechtol of his decision to terminate Hays. On that same day, Hays was called to Bechtol's office after lunch. Miguel Sedano and Bechtol were present. Miguel Sedano gave Hays a disciplinary action notice dated January 22, which read, in pertinent part:

> This disciplinary action is for the following reasons:
>
> 1) Excessive Discrepancies (see attached DR's, reference documented verbal warnings).
>
> 2) Excessive talking & not paying attention to job.[7]
>
> 3) Work area not being kept clean.[8]

Hays asked to see the discrepancy reports referred to, and Bechtol give him five discrepancy reports numbered, dated, and described as follows:

Discrepancy Report no. and date	Stated cause and corrective action (CA)
No. 6567-1/14/2002	. . . broken insert while roughing the bores . . . setting boring bar incorrectly . . . boring bar insert coming lose while machining. CA: Operators instructed to inspect that the tools are sharp and tight prior to running the part, check more often to help reduce this type of problem.[9]
No. 6579- 1/26/2002	Drill pushed in the holder, making hole shallow for the boring end mill. Which caused the boring end mill to hit the bottom of the hole making the hole oversize. CA: Operator instructed to use end mill holder in place of collect holder to insure that the set screws will prevent to[ol] from moving. [Handwritten on the bottom of the DR]: Operator was told he needed to pay more attention when he is setting up.[10]
No. 6646- 5/11/2002	Heading on program, specified 1/2 thick cutter. Program was changed to use 3/8 thick cutter. Operator used 1/2 cutter which caused miscut. CA: Heading on program has been changed to reflect correct thickness of 3/8 thick.
No. 6679-7/8/2002	Twin bore was not setup correctly when switching from 1 setup for roughing 8.800 to finish setup for roughing 8421. CA: check and double check tools when changing over setup. More tools may be needed in the shop to accommodate multiple setups. This may not have happened if there were two boring bars setup for operations that were already running. [Handwritten on the bottom of the DR]: Operator was told that a machinist should be able to adjust the same boring head for different diameter as needed. But needed to check his work.[11]
No. 6714-8/16/2002	Twin bore was set incorrectly by tool crib and was not rechecked by machinist before running tool. (roughing boring bar). CA: Boring bars are to be set by machinists not tool crib. [Handwritten on the bottom of the DR]: Machinist was warn[ed] about this problem before. And was told that we couldn't afford to make the same type of mistake twice.[12]
No. 6721-9/17/2002	Item #1 Misinterpret program call-cut of rotation per section. (2) Operator made a program change. From center drill to 90° spot drill and forgot to change Z depth. CA: Item #1 visually double check section pinned at plate to program call-out to print specs. (2) Program has been corrected to the correct Z value or depth. [Handwritten on the bottom of the DR]: Tim Hay was

[6] It is not unusual for Miguel Sedano to tell employees to stop talking and return to work. In the past, Miguel Sedano has interrupted conversations Hays had with coworkers to tell them to return to work. There is insufficient evidence for me to infer that Miguel Sedano knew Hays was discussing union matters with coworkers in January, but it is clear that Miguel Sedano knew Hays was talking to coworkers more than usual.

[7] While Hays had been told on occasion that he was talking too much, he had never been warned about it.

[8] Hays credibly denied this accusation; Respondent had never warned him of such a problem.

[9] Hays told Bechtol Larry Owens had done that part. L. Owens was also listed as operator on this DR.

[10] Hays did not recall ever being so warned. Miguel Sedano admitted adding the comment in January (presumably the 23d when he added comments to the other DRs). The part was salvaged. I conclude Miguel Sedano did not warn Hays.

[11] Sedano admitted adding the handwritten comment to the bottom of this discrepancy report on January 23. Slater testified that after trying for months to save the part, Respondent considered it unsalvageable in mid-January.

[12] Hays credibly denied he was ever so warned. Sedano admitted adding the handwritten comment to the bottom of this discrepancy report on January 23.

> told to think about the differences between a center drill to a 90° spot drill and check distance to go on the screen display.[13]

Hays asked why he was receiving disciplinary action for things that had happened months ago. Bechtol said Hays' mistakes had cost the company considerable money, referring to DR 6679 (the AKT part), in which Respondent set its cost at $29,589.[14] Hays accused Bechtol of firing him because he was organizing a union. Bechtol denied the accusation and gave Hays an employee separation report, which noted that prior disciplinary action was given on that same date, January 23, and stated the following reason for termination: "In reference to Disciplinary action date 1/23/03 and DR#'s 6567, 6579, 6646, 6679, 6714, and 6721." When informed of his termination, Hays directed profanity and a vulgar gestures at Bechtol and slammed and kicked the door on exiting the office.[15] Leaving the office to retrieve his tools, Hays saw Reddoch about 20 to 30 feet away and yelled to him that he had just been fired. About 5 to 10 people were within hearing distance. Later, Hays went to the scheduled union meeting and told attending employees, most of who already knew, that he had been fired.

Mark Burnett (Burnett) who was still employed by Respondent at the time of the hearing, also made errors in machining parts. One error resulted in an estimated $20,000 to $25,000 cost to Respondent, but Respondent did not discipline Burnett. Other employees, including Will Chavez, Sharma, Eric Franklin, and Dave Leach, also made significant errors, and were not discharged.[16]

Mark Slater (Slater), Respondent's president, testified that on January 22 he decided to terminate Hays and Reddoch, whose termination is described hereafter, in order to make a statement about work quality. Slater asserted a rash of production quality problems had occurred, and Reddoch and Hays were the worst offenders. He testified that on January 22 he decided to terminate Hays because of the production quality problems and because the company had realized their efforts to save the AKT part were unavailing; the part would have to be scrapped at a cost of nearly $30,000.[17] Slater informed Bechtol of his decision on January 23.

2. The discipline and termination of Reddoch

Respondent employed Reddoch December 13, 1999 to January 23. Beginning January 7, he discussed union benefits with other employees and invited them to union meetings.[18] He attended union meetings with other employees on January 7, 14, and 16, and became a member of the employee organizing committee. On January 16, the organizing committee planned a meeting for January 23 to which all unit eligible employees would be invited. Thereafter, during work hours the week of January 20, Reddoch invited numerous employees to the January 23 meeting. The office window of Day-Shift Supervisor Miguel Sedano overlooked Reddoch's machine area, and Miguel Sedano walked around the machining areas during the day. During the week of January 20, Miguel Sedano several times told Reddoch who was talking to another employee about the Union, to stop talking and return to work.[19]

Reddoch traditionally ate lunch and played cards with employees, including Hays and Cedric Partlow (Partlow) at an outdoor picnic table. Supervisor Cliff Conley (Conley) commonly joined the group. At lunch on January 21, with Conley present, Reddoch asked Partlow if he planned to attend the meeting on Thursday at the Best Western (referring to the union meeting scheduled for January 23.) Conley said he did not need to hear about that, and Reddoch told Partlow they would talk about it later. Thereafter, Conley did not join the group for lunch and card playing. Hays corroborated Reddoch's account. Conley denied it and maintained he was unaware of any union activity prior to the terminations of Reddoch and Hays. Respondent called Partlow, who was still employed, to testify. In his initial testimony, he said he did not recall any such lunch table conversation. Under cross-examination, however, when asked if and when Reddoch had told him about the January 23 meeting, Partlow exhibited such confusion and equivocation as follows, that I cannot accept his original testimony:

> A. Well, I am not quite sure when but as I recall, it seemed like to me, I didn't find out about it until practically the day when it was—the same day. I mean, it was—I don't know. I just didn't—no one ever really told

[13] Employee Pablo Rodriguez had run the part incorrectly before it came to Hays, but welding repaired his error. Hays mistakenly oversized the counter sink, and welding also repaired it. Hays then satisfactorily remachined the part. Sedano admitted adding the handwritten comment to the bottom of this discrepancy report on January 23.

[14] Hays was aware of the July 8, 2002 DR and had expected to be fired at that time, but Sedano had said Respondent would not fire Hays but would try to fix the part.

[15] Hays later apologized to Bechtol and others in attendance at his termination for this conduct, which apology Bechtol and Miguel Sedano accepted.

[16] Respondent issued disciplinary action notices to Sharma on January 15 and February 21, respectively. The January 15 notice stated that stacked chips caused the end mill to damage the part. Since alignment was not checked, all remaining features were miscut at a cost of approximately $29,894. The notice of February 21 stated Sharma had miscut an AKT 25 K Lid worth $25,951.00 and that "[f]urther disciplinary action may be required if the part cannot be salvaged." Slater testified Respondent did not discharge Sharma because he had (with a break in service) worked there for over 10 years, that he was a good employee, and was learning the machine on which the errors were made. Slater admitted Miguel Sedano had recommended Sharma's discharge.

[17] It is unclear whether Slater said he realized the part was unsalvageable in December or in January. He testified that the January scrap costs were unusually high at about $90,000 compared to $20,000 to $30,000 for most months. Presumably, those costs included the AKT part as well as Sharma's mistake.

[18] Reddoch invited lead man Murad Murad to the January 16 meeting, and he attended.

[19] Reddoch testified that prior to union activity in the facility, he had had conversations with employees at his machine without Sedano interrupting them. No evidence was presented, however, as to comparable length of the exchanges and no evidence that Sedano knew Reddoch was discussing the Union in the latter conversations. I cannot, therefore, infer any union animus by Miguel Sedano's directing employees to stop talking, but I conclude the supervisor was aware that Reddoch was doing considerably more talking than usual.

me about it. And, you know, it just—I think I was told the same day that the meeting was held.

. . .

Q. Could [you have been told] at lunch?

A. It is possible but, you know, I just don't—you know, it was just it went through one ear and out the other ear because it just wasn't that important to me.

Although Conley had admittedly joined the group regularly, he said he ceased doing so prior to January 23 because he was too busy. Under cross-examination, he was less definite, saying only that he did not remember playing cards with the group that week. I found his manner in giving this testimony guarded and his stated reason for deserting the group unconvincing. Conley also testified that he first realized a union organizing campaign was going on at the company a few days after the discharges of Hays and Reddoch when "there were rumors flying around . . . that there was union activity going on." I accept Conley's testimony regarding the rumors, but I question the timing he assigns. On January 23, Hays confronted Miguel Sedano and Bechtol with the fact of employee union activity. It is implausible that Conley was not informed of that, and so he must have known of ongoing union activity from Hays's January 23 proclamation. Therefore, if Conley first learned of employees' union activity from "rumors flying around," he must have learned of it before Hays was fired. I credit Hays and Reddoch's accounts of what occurred at the January 21 lunch gathering. I also infer from Conley's reaction to Reddoch's mention of the Thursday meeting that Conley knew the meeting Reddoch referred to was a union meeting.

After lunch on January 21, Miguel Sedano summoned Reddoch to the office of Tom Bechtol (Bechtol), facility manager. Bechtol gave Reddoch a disciplinary action notice dated January 15, which read in pertinent part:

> On 1/8/03 you ran part 1GO2267-1 job number X2680. A miss cut on Data-C-of .922" deep by .780" wide was made due to some changes, which were not needed, in the program made by you. The changes were not checked and this caused the part to be scrapped.
>
> Then on the next part of the same number and job some changes were made to the x, y, and z-axis set positions. Derek Smith told you that the center of the tooling ball was x0 and y0, which was incorrect; you started running the part without verifying that the x, y, and z-axis settings matched the program, which was a proven program. X axis was off +.625" causing the part to be damaged. Estimated cost of damage is $5,264.00.
>
> Immediate improvement must be shown and maintained or further disciplinary action will be taken, up to and including termination.

The part referred to in the disciplinary notice had been machined three times. The first time Reddoch machined it perfectly, but John Lombardo, the machinist at the next step, damaged it. The second time, when Reddoch changed the workstation, the machine defaulted to another setting, which Reddoch did not catch, and consequently miscut the part. The third time programmer Derek Smith misprogrammed values, causing another miscut.[20] Neither John Lombardo nor Smith was present at the disciplinary meeting. Reddoch asked if John Lombardo or Derek Smith had been disciplined for their roles in the mistakes, but Bechtol did not answer. The following day, Reddoch complained to Bechtol about the disparate treatment, and Bechtol said he would look into it. There is no evidence he did so, and there is no evidence either John Lombardo or Derek Smith received discipline for his mistake on the part.

In the morning of January 23, Reddoch worked on a part that had been set up off-center by the night shift machine operator, Vince Hamilton (Hamilton). Reddoch reported the problem to Miguel Sedano who sent the part to inspection. Later that day, Reddoch was called to Bechtol's office. With Miguel Sedano present, Bechtol gave Reddoch a disciplinary action notice dated January 23, which concerned the part Reddoch had earlier given Sedano and which read in pertinent part:

> On 1/21/03 [sic][21] you ran art number sub-140005-001, job number x2727-200 operation 5500. Part was run off center by .040". You did not set up the part, but you should have checked the parts position. You started checking the part when you were finishing the critical holes, checking should have been done during semi finishing. Ref. DR#6844.[22]

Reddoch protested he had not been responsible for the mistake. Bechtol did not respond but only said Reddoch made too much money to make such mistakes, and the company would have to let him go. He gave Reddoch an employee separation report dated January 23, which referred to the cause of termination as "Disciplinary actions given on 10/31/00, 1/15/03, and 1/23/03 and DR# 6844."

While Bechtol agreed to Slater's motivation in terminating Reddoch, i.e., the amount of scrapping his work engendered, he was unable to recall anything about his discussions with Slater regarding the disciplinary notices or the termination. Bechtol cited Marco Lopez, Quang Dang, and Paul Cortis as employees who had also been terminated for poor quality work. Quang Dang was terminated for not meeting company standards in his 90-day probationary period. Paul Cortis was laid off as a reduction in force. In addition to those employees, Slater testified that Respondent terminated Brad Green, Phillip Potter, and Dwane Robinson for poor quality work. Company records show the three to have been laid off due to lack of work. Slater claimed they were actually fired, but Respondent misstated the cause of termination to permit them to draw unemployment. I cannot accept his explanation. There is no evidence of such a company practice, and I note neither Reddoch nor Hays were similarly accommodated.

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[20] Reddoch stopped the part as soon as he saw the miscut occurring, and the part was salvaged.

[21] The date of January 21 appears to be an inadvertent error as the corresponding DR is dated January 23.

[22] DR# 6844 refers to a discrepancy report (DR) of that number. DRs do not constitute discipline. Respondent prepares a DR for every part not completed exactly to specification. Respondent provides the DR to the purchaser. Although DR# 6844 (dated January 23) noted both Reddoch and Hamilton were operators on part sub-140005-001, Hamilton was apparently not disciplined for his share of the mistake.

3. The discipline, performance review, reduced hours, and layoff of Pinheiro

Beginning in January, Pinheiro attended union meetings and posted and distributed union flyers to employees at work, handing one to Miguel Sedano on one occasion.[23] On a later occasion, Pinheiro told his supervisor Eddie Rogers he meant no disrespect by his union activities. Rogers replied that Pinheiro was a hard worker, and he had no problem with that (meaning the union activity).

In January, Pinheiro asked Rogers and Miguel Sedano not to remove flyers he had posted. On January 31, after observing fliers had been removed, Pinheiro told Rogers and Miguel Sedano he planned to file charge with the NLRB over their removal. Later that day, Respondent issued Pinheiro a disciplinary action notice, which read in pertinent part:

> On Tuesday night, 1-28-03 Marcelo was machining job number X2618-074Hsq. on the Toshiba. He unloaded the part and it was not finished. One of the seal faces still needed to be serrated. The part will have to be set up again to finish it.

Pinheiro protested he had the part inspected before unloading it as required, and the inspector "bought"[24] it; thereafter Pinheiro reloaded the part and finished it within the time target and without scrapping it. Respondent did not withdraw the disciplinary notice, and Pinheiro refused to sign it. Sometime after that discipline, Pinheiro told Rogers that if Bechtol continued to "harass" him, he would get a lawyer.[25]

On February 6, Rogers gave Pinheiro a performance review covering the period September 3 to December 2, 2002. Rogers marked Pinheiro as poor in "attitude," noting in the comment section that Pinheiro "threatened to fight one of his coworkers." In the employee comment section, Pinheiro wrote, "Vick had threatened to go talk to Mark & tell him things that were not true about me . . . . All I said to Vick was that there were consequences to his actions." In testimony, Pinheiro admitted he had threatened to "kick [the] butt" of coworker Vick Sharma (Sharma) who had spread rumors about him. Sharma called the police when his supervisor refused to do so. Rogers sent both employees home.

Prior to the election, Respondent reduced Pinheiro's work hours. Bechtol told him it was because work was slow. Other employees' work hours were reduced as well, and some employees were laid off.[26]

On March 6, Pinheiro served as an observer at the election. On March 25, Respondent issued a disciplinary action notice to Pinheiro for "excessive discrepancies and quality problems within a 6-month period." The disciplinary notice referred to DRs 6864, 6907, and 6914, which state as follows:

Discrepancy Report no. and date	Stated cause and corrective action (CA)
No. 6864-Feb. 14	There was porosity in the casting. The sand in the porosity caused the material to tear.[27]
No. 6907-March 14	Insufficient lubrication while tapping[28]caused the material to tear. Operator has been instructed to put a generous amount of Molecular's Tapping Fluid inside the hole and also apply Tapmatic while tap is cutting.[29]
No. 6914-March 19	Operator used wrong dia drill to drill these holes. Did not check dia of tool before using it. Operator has been told to check every tool before using them and check 1st hole he drills before going any further.

By letter dated March 26, Bechtol informed Pinheiro Respondent would remove DR no. 6864 from the March 24 disciplinary action. The disciplinary action remained in effect.

On April 8, Respondent laid off six employees. Bechtol told Pinheiro he would be laid off as work had decreased and he was the least senior employee.[30] Pinheiro remained on layoff until his recall In June.[31]

B. Alleged Independent Violations of Section 8(a)(1)

Consolidated complaint paragraph 15 alleges that Respondent, by Miguel Sedano, threatened an employee with unspecified retaliation because of his union activities. About 1 week after the election, Pablo Rodriguez (Rodriguez) who is still employed by Respondent, complained to Miguel Sedano about Respondent having cut employees' work hours for a few weeks before the election, saying he knew the hours had been cut because of the Union. Miguel Sedano replied that of course if employees attacked the company, the company would get back at them. When Rodriguez said he supported the Union for better wages, Miguel Sedano said Rodriguez would be the one to lose.

Consolidated complaint paragraphs 16 and 17 allege that Respondent promulgated and enforced an *ad hoc* rule prohibiting the posting of union literature. In late January/early February, Respondent permitted the posting of non-work-related flyers at its tool crib and restroom walls while, during that same time, it removed union flyers from the same locations.

[23] Burnett and employee Edwin Shook also posted prounion flyers, some of which were removed.

[24] "Buying" a part is Respondent's term for an inspector having passed off on or endorsed a part as completed. The inspector, Belton, who was present at the disciplinary meeting, admitted he had "bought" the part. Bechtol later orally "disciplined" Belton.

[25] This comment was motivated by Pinheiro having heard that Bechtol had asked a coworker if Pinheiro had made mistakes.

[26] The General Counsel does not dispute the lawfulness of Respondent's decision to reduce employees' hours but only its selection of Pinheiro.

[27] Rogers, Pinheiro's supervisor, did not consider this DR to be Pinheiro's fault.

[28] The term for threading holes.

[29] Rogers said Pinheiro may or may not have known of the method the day man had used on the same job.

[30] Bechtol's statement was inaccurate as machinist Rusalin Manea was hired after Pinheiro. However, Pinheiro was least senior in his work center, which was slow at that time.

[31] The General Counsel does not question the lawfulness of Respondent's layoffs but only its selection of Pinheiro.

C. The Requested Gissel Remedy

The parties stipulated as follows: the appropriate collective bargaining unit herein included no more than 91 employees during the period January 7 through January 24. During that same period, 57 of Respondent's employees signed union authorization cards stating, "I hereby authorize the United Steelworkers of America-AFL–CIO–CLC to represent me in collective bargaining."

III. DISCUSSION OF ALLEGED UNFAIR LABOR PRACTICES

A. The Discipline and Discharges of Hays and Reddoch

Respondent contends it had no knowledge of any union activity among its employees prior to the discharges of Hays and Reddoch. I cannot accept that assertion. As set forth above, I have concluded that Conley, Respondent's foreman, knew of employees' union activities prior to January 23. It follows, therefore, that Respondent had knowledge of its employees' union activities prior to its discharges of Hays and Reddoch.[32] Discharge circumstances can also support an inference of knowledge. *Music Express East, Inc.*, 340 NLRB No. 129 (2003). The circumstances of these two discharges support an inference that Respondent knew of employees' union activity in general and that Hays and Reddoch were significant proponents of the activity. In drawing that inference, I have noted it was Reddoch who posed the lunch table question about the union meeting and that both Hays and Reddoch were unusually interactive with coworkers in the 3 days preceding their discharges, which would reasonably draw employer attention to them.

Hays had received no disciplinary action notices from Respondent prior to that given him when he was discharged on January 23. It is clear the notice's first two reasons for discharge, excessive talking and messy work area, were not true concerns of Respondent. Respondent failed to provide evidentiary support for either of the two assertions, and as to the latter, Miguel Sedano, Hays's supervisor, additionally said he frequently saw employees talking together, and it was not unusual for him to tell them to go back to work. These unfounded accusations cannot have been reasons for Hays's discharge, and their very inclusion in the disciplinary notice suggests pretext.[33]

The six DRs Respondent issued to Hays constitute Respondent's only colorable discharge explanation. All were issued in 2002, the last more than 4 months prior to Hays's discharge. Slater, who made the discharge decision, said Hays's scrapping record prompted it; however the parts referenced in three of the DRs were not scrapped, which gives rise to a question as to why they were included in the discharge documentation. Miguel Sedano added handwritten comments to the bottoms of three of the DRs on the day of discharge to reflect oral warnings that were never given to Hays,[34] which gives rise to another question of why Miguel Sedano felt it necessary to fabricate evidence against Hays. The only reasonable inference is that Respondent felt the DRs needed beefing up and that Respondent felt that way because reliance on the DRs was spurious.

As to Hays's mistake on the AKT part, the scrapping of which cost Respondent nearly $30,000 and which might reasonably support a discharge, still more questions arise: Why did Miguel Sedano tell Hays at the time of the mistake that Respondent would not fire him? Why did Respondent wait until January 23 to discharge Hays for a mistake that occurred on July 8, 2002? If, as Slater contended, it was only in December or January Respondent learned the part would have to be scrapped, why did Conley testify Respondent knew about a week after the mistake that the part would have to be scrapped? If Respondent was so concerned about scrapping that it fired Hays for his July 2002 mistake, why didn't Respondent fire Sharma for his equally costly January and his February mistakes?[35] Why was Hays's discharge so peremptorily abrupt when no exigency existed? Respondent provided no adequate answers to these questions, and I conclude the only reasonable answer is that Respondent's asserted reasons for issuing Hays a disciplinary action notice and discharging him on January 23 are pretextual.[36]

Reddoch's January 21 discipline and January 23 discharge were even more obviously pretextual than Hays's.[37] Other employees shared equal or even greater culpability in the mistakes that assertedly motivated Reddoch's termination. Yet none was fired. Respondent gave no cogent explanation why they and still other employees who made similar or more costly errors were not fired. In comparison to other disciplinary ac-

[32] A supervisor's knowledge of union activity is ordinarily imputable to the employer, and no basis exists here for not doing so. *Woodlands Health Center*, 325 NLRB 351, 361 (1998).

[33] By the hearing, Respondent had essentially abandoned these two reasons and shifted its focus to Hays's DRs. Shifting explanations for discharge also demonstrate pretext. *Douglas Foods Corp*, 330 NLRB 821 (2000).

[34] As set forth above, I have credited Hays's denial of being given the oral warnings belatedly reflected on the DRs, and I have noted Miguel Sedano's volte-face admission of adding the comments on the day of Hays's discharge.

[35] Respondent argues the situations are different because it has not yet been determined that the part Sharma miscut on January 14 will have to be scrapped, and Sharma has 10-year seniority. I discount both arguments. Sharma's January 15 disciplinary action notice says nothing about salvageability in contrast to his February 21 disciplinary action notice, which notes salvage determination on the "AKT 25 K Lid worth $25,951" is pending. As to seniority, there is nothing in statements to Hays, Reddoch, or Sharma to suggest that seniority played a role in any discharge determination.

[36] The General Counsel did not allege a violation of the Act by Respondent's issuance of a disciplinary action notice to Hays on January 23. However, as the facts surrounding the discipline were fully and fairly litigated, and as the issue is closely connected to other allegations of the complaint, I have considered the lawfulness of the discipline herein. *Gallup, Inc.*, 334 NLRB 366 (2001); *Letter Carriers Local 3825*, 333 NLRB 343 fn. 3 (2001); *Parts Depot*, 332 NLRB 733 (2000).

[37] The General Counsel did not allege a violation of the Act by Respondent's issuance of a disciplinary action notice to Reddoch on January 21. However, as the facts surrounding the discipline were fully and fairly litigated, and as the issue is closely connected to other allegations of the complaint, I have considered the lawfulness of the discipline herein. *Gallup, Inc.*, supra; *Letter Carriers Local 3825*, supra; *Parts Depot*, supra.

tions in evidence, Reddoch's discharge was unusually abrupt, and one of the participants, Bechtol, suffered a singular memory deficiency concerning management discussions leading up to it. Respondent also presented spurious evidence to support its discharge of Reddoch. Of fifteen DRs for parts Reddoch worked on from June 2000 until the date of his discharge, only three clearly reflect operator error. Respondent's production of old and immaterial production discrepancies strongly suggests discharge pretext. Finally, comparative terminations offered by Respondent as evidence that Reddoch's discharge fit within normal parameters, are inapt. Two of the named employees were terminated during their probationary periods, and four were laid off for lack of work. As counsel for the General Counsel urges, since "the reasons proffered [by Respondent] are inadequate and conflicting . . . a finding of improper motive is appropriate."

With regard to the discipline and discharges of Hays and Reddoch, I conclude Respondent's stated reasons for both discipline and discharges are pretextual. It is not, therefore, necessary to "go through the burden-shifting inquiry as to whether [they] would have been discharged had [they] not engaged in union activity, as required by *Wright Line* . . . ."[38] *Sodexho Marriott Services*, 335 NLRB 538 fn. 6 (2001) [citations omitted]. However, if I were to apply a *Wright Line* analysis, I would find the General Counsel met his burden of showing that Hays and Reddoch's protected conduct was a motivating factor in Respondent's decision to discipline and then to discharge them. I would also find that Respondent did not meet its shifted burden to demonstrate that the same actions would have taken place even in the absence of protected conduct. Accordingly, I conclude Respondent disciplined and fired both employees because of their activities in support of the union organizing drive.

B. Pinheiro's Discipline, Performance Review, Reduction of Hours, And Selection for Lay Off

Respondent gave Pinheiro a disciplinary action notice on January 31, the same day he told supervisors he planned to file charges with the NLRB over Respondent's removal of prounion postings. I have considered whether Respondent's stated reasons for the disciplinary notice were pretextual. Pinheiro's mistake, which formed the basis for his January 31 discipline, was a quickly remedied error of omission. It resulted in neither cost nor deadline delay to Respondent and was, at least in part, an inspector as well as machinist error. The evidence supports a conclusion that no other machinist making so harmless an error would have been disciplined, and, in the event, the errant inspector was only orally reprimanded. Moreover, the timing of Pinheiro's supernumerary discipline, coming shortly after Pinheiro had threatened NLRB action but three days after the mistake occurred, is particularly suspect. Based on these considerations, I conclude Respondent's reasons for the January 31 written discipline were pretextual and the discipline was given because of Pinheiro's vigorous support of the Union. Under the *Sodexho* reasoning set forth above, it is unnecessary to apply a *Wright Line* analysis. However, under *Wright Line*, the evidence would require me to conclude the General Counsel has met his burden of showing that Pinheiro's protected activity was a motivating factor in Respondent's decision to discipline him on January 31. I would also find that Respondent did not meet its shifted burden to demonstrate that the same discipline would have occurred in the absence of the protected conduct.

On March 25, Respondent issued Pinheiro another disciplinary action notice for "excessive discrepancies and quality problems within a 6-month period." The disciplinary notice named three DRs, one of which was later withdrawn and one of which may have been due to insufficient information. The assessed cost to Respondent was $100. Given the discrepant treatment accorded Pinheiro by the March 25 disciplinary notice, I conclude that, like the January 31 notice, it was pretextual, and the discipline imposed because of Pinheiro's union support.

As to Pinheiro's performance review, reduction of hours, and selection for lay-off, I have applied a *Wright Line* analysis. Under that analysis, to prove an employee was disciplined in violation of Section 8(a)(3), the General Counsel must first persuade, by a preponderance of the evidence, that an employee's protected conduct was a motivating factor in the employer's decision. If the General Counsel is able to make such a showing, the burden of persuasion shifts "to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Wright Line*, supra at 1089. The burden shifts only if the General Counsel establishes that protected conduct was a "substantial or motivating factor in the employer's decision." *Budrovich Contracting Co.*, 331 NLRB 1333, 1333 (2000). Put another way, "the General Counsel must establish that the employees' protected conduct was, *in fact*, a motivating factor in the [employer's] decision." *Webco Industries*, 334 NLRB 608 fn. 3 (2001).

The elements of discriminatory motivation are union activity, employer knowledge, and employer animus. *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991). Here, those elements are met: Pinheiro was actively involved in supporting the Union, Respondent was aware of it, and Respondent demonstrated its animosity by its unlawful January 31 and March 25 discipline. It is not so clear the General Counsel has established that protected conduct was, *in fact*, a motivating factor in Respondent's performance review, reduction of hours, and selection for lay-off of Pinheiro as required by *Webco Industries*, supra. Nonetheless, I have assumed the General Counsel has met his initial burden, and I have shifted the burden to Respondent to demonstrate it would have given Pinheiro a poor attitude rating in his performance review, reduced his hours, and selected him for lay-off even in the absence of his protected activities. I conclude Respondent has met its burden as to all three actions regarding Pinheiro.

Concerning his performance review, Pinheiro admittedly threatened a coworker with physical violence. To have received merely a poor attitude ranking on his performance review less than 2 months later cannot be considered extraordinary or unreasonable. I recognize the legitimacy or equity of Respondent's action is immaterial if Respondent's motive in

[38] 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Mgt. Corp.*, 462 U.S. 393 (1983).

assigning the attitude rating was unlawfully retaliatory.[39] However, the reasonableness of Respondent's action is a factor to be considered. I have also considered that no attendant antiunion sentiments accompanied the rating, which was given by a supervisor who had earlier assured Pinheiro he had no problem with his union activity. Regarding his hour reduction and layoff, Pinheiro was among a group of Respondent's employees who received nondiscriminatory hour reductions and layoffs. His seniority level was in line with those selected for hour reductions and layoffs, and he was recalled to employment when work picked up. The General Counsel asserts but has not shown that Pinheiro's selection was "clearly tied" to his union activities. Accordingly, I conclude Respondent has demonstrated it would have taken those actions even in the absence of Pinheiro's union activities.

IV. INDEPENDENT VIOLATIONS OF SECTION 8(a)(1)

Although Respondent lawfully reduced its employees hours prior to the election, when Miguel Sedano ascribed the reason to company retaliation for employee union activity, he violated Section 8(a)(1) of the Act.[40] Informing employees an employer's conduct is discriminatorily motivated coerces employees and independently violates the Act even if the conduct is not unlawful. *K-Mart Corporation*, 336 NLRB 455 (2001); *Owens Corning Fiberglass Co.*, 236 NLRB 479, 480 (1978). Miguel Sedano's further statement that that Rodriguez would be the one to lose if he supported the Union constituted a threat of unspecified reprisal in violation of Section 8(a)(1) of the Act.

Respondent admittedly removed union literature from posting areas where it permitted employee personal notices to remain. "Where an employer permits its employees to utilize its bulletin boards for the posting of notices relating to personal items . . . or, in general, any nonwork-related matters, it may not 'validly discriminate against notices of union [material] which employees also posted. [footnotes omitted]." *Honeywell, Inc.*, 262 NLRB 1402 (1982).[41] Here, Respondent did not "uniformly [prohibit] the posting of non-work-related messages on its bulletin boards."[42] Respondent's removal of prounion literature therefore violated Section 8(a)(1) of the Act.

A. The Propriety of a Bargaining Order

By January 24, a majority of Respondent's unit employees had designated the Union as their collective-bargaining representative. Respondent argues that "while 63% of the bargaining unit employees may have signed authorization cards," the Union did not have "overwhelming support." Such is not required to support a bargaining order if Respondent's conduct otherwise warrants one.

In *Gissel Packing Co.*, supra, the Supreme Court identified two categories of cases in which a bargaining order is appropriate: Category I cases are exceptional situations involving outrageous and pervasive unfair labor practices that traditional remedies cannot resolve and which make a fair election impossible. Category II cases involve unfair labor practices that are less extraordinary but that nonetheless have a tendency to undermine majority support and impede the election process. As such unfair labor practices render the possibility of a fair election slight, "employee sentiment once expressed through cards would . . . be better protected by a bargaining order."

The instant matter meets the standards for a *Gissel* category II bargaining order. On the day of a scheduled unit-wide union-organizing meeting, Respondent precipitately and unlawfully fired two prominent employee organizers. Hays' discharge was dramatically made known to many employees when he shouted out the news as he left the plant, and both discharges were reported to additional employees at the two union meetings held a short time later. The discharges were so devoid of valid basis that they must have been calculated to send a warning to all employees of the consequences of union advocacy, and it is reasonable to infer that employees viewed them as such. The discharge of leading union adherents is a "hallmark" violation[43] and has an especially pernicious effect on other employees. *National Propane Partners L.P*, 337 NLRB 1006 (2002).

While it is true, as Respondent argues, that the bulk of the union authorization cards were signed on January 23 and 24, the day of and the day following the discharges, that does not show the discharges were without effect among employees. It is reasonable to expect discharges that remained unremedied through the date of the election to affect even stalwart prounion sentiment and to intimidate employees. Moreover, Respondent's continued unlawful conduct could only have reinforced intimidation. Even after the Union's unsuccessful election bid, when employees might have expected antiunion animosity to cool, Respondent continued its unlawful conduct. On January 31, Respondent unlawfully disciplined Pinheiro, a prominent and outspoken union adherent. In January and February, Respondent unlawfully removed prounion literature from company posting areas. About a week after the election, Miguel Sedano's ascribed the company's reduction in hours to antiunion retaliation and told an employee he would "lose" by supporting the union. About 3 weeks after the election, Respondent issued Pinheiro another unlawful disciplinary notice. Those actions could only have served as a continuous warning to employees of the dangers attendant on union adherence.[44] In these circumstances, the possibility of erasing the effects of Respondent's violations is slight, and the holding of a fair rerun election pursuant to timely objections is improbable. See *Joseph Stallone Electrical Contractors, Inc.*, 337 NLRB 1139,

[39] *E & L Transport Co.*, 331 NLRB 640 (2000).

[40] The General Counsel did not allege a violation of the Act by Miguel Sedano's implied assertion that Respondent's reduction in hours was to "get back at" employees. However, as the facts surrounding the statement were fully and fairly litigated, and as the issue is closely connected to other allegations of the complaint, I have considered the lawfulness of the statement herein. *Gallup, Inc.*, supra; *Letter Carriers Local 3825*, supra; *Parts Depot*, supra.

[41] Enfd. 722 F.2d 405 (8th Cir. 1983).

[42] *Wal-Mart Stores, Inc.*, 340 NLRB No. 83 fn. 1 (2003).

[43] *Douglas Foods Corp.*, supra at 822.

[44] Respondent's argument that pre-petition and post-election conduct has "no bearing on the possibility of a fair election for bargaining order analysis" is unpersuasive. Misconduct after an election further diminishes the likelihood that traditional remedies will prove effective. *General Fabrications Corp.*, 328 NLRB 1114 (1999).

1139–1140 (2002); *L.S.F. Transportation, Inc.*, 330 NLRB 1054, 1056 (2000). Accordingly, having determined that the Union enjoyed majority status in the appropriate unit and that Respondent's unfair labor practices undermined majority support and impeded the election process, I find a bargaining order is an appropriate remedy in this case.[45]

Objections to Conduct Affecting Results of Election

The Union filed the petition in Case 31–RC–8202 on January 24.[46] Region 31 conducted an election on March 6 among employees in the following unit:

> All full-time and regular part-time production, maintenance, shipping and receiving employees and programmers employed by Respondent at its facility located at 1720 Bon View, Ontario, California.

The tally of ballots showed the Union received 37 votes and 42 votes were cast against the Union. On March 13 Petitioner timely filed objections 1 through 10 to the election, which, as noted above, the Regional Director consolidated with the unfair labor practices alleged herein. The objections allege that Respondent engaged in certain conduct during the critical laboratory period that interfered with the election. The evidence relating to objections 4, 5, and 9 correlates to allegations of the complaint and is set forth above. Objections 1, 2, and 3 contain independent allegations of objectionable conduct, the evidence of which is set forth below.

Objection 1 (as modified): The Employer allowed many supervisors inside the polling place.

Petitioner contends that Respondent's leadmen, Jesus Sedano, Murad Murad, Milad Murad, Albert Viramontes, Hyun Lee, and Jerry Belton, are supervisors within the meaning of the Act and were allowed in the polling place during the voting. All seven cast challenged ballots in the election, and several spoke to other employees while waiting to vote.[47]

Section 2(11) of the Act defines a "supervisor" as any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. "The possession of even one of those attributes is enough to convey supervisory status, provided the authority is exercised with independent judgment, not in a merely routine or clerical manner." *Arlington Electric, Inc.*, 332 NLRB at 845 (2000), quoting *Union Square Theatre Management*, 326 NLRB 70, 71 (1998). Any lack of evidence is construed against the party asserting supervisory authority.[48]

There is no evidence that any of Respondent's lead men has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees. The supervisory issues herein center on the authority to assign and direct employees, some measure of which authority each of the lead men exercised. Whether the exercise was with independent judgment and not in a merely routine or clerical manner is the crucial question in determining the supervisory status of each. As the United States Supreme Court noted, "The statutory term 'independent judgment' is ambiguous with respect to the *degree* of discretion required for supervisory status . . . . It falls clearly within the Board's discretion to determine, within reason, what scope of discretion qualifies."[49] The Board is careful not to give too broad an interpretation to the statutory term "independent judgment" because supervisory status results in the exclusion of the individual from the protections of the Act. *Tree-Free Fiber Co.*, 328 NLRB 389 (1999). The Board does not find the exercise of only "routine" authority, i.e. that which does not require the use of independent judgment in directing the work of other employees, to fit within the ambit of Section 2(11) of the Act. *Beverly Health and Rehabilitation Services, Inc.*, 335 NLRB No. 54 (2001).

Evidence was adduced that during the critical period, the following lead men performed the following duties:[50]

Jesus Sedano:	deburring department lead man since February 21. He distributed deburring work, giving easier parts to less experienced employees, watched to see the deburring work was done correctly, and taught correct procedures as necessary. If employee problems arose, he reported them to Mr. Conley. When directed by Mr. Bechtol or Mr. Conley that a part had to be completed quickly, he transmitted the information to the affected employee. He reported to Mr. Conley the work quality of a probationary employee who was later fired. When deburring employee Enrique Coronado wanted Respondent to hire a relative, he did not mention the matter to Jesus Sedano but spoke only to Mr. Conley.
Murad Murad:	day shift lathe lead man; reported to Miguel Sedano who went over job assignments with him and assigned the lathe work. He sometimes told employees their work areas were messy, they were going too fast, or they needed to be accurate. He was heard to tell

[45] Respondent asserts that the Union's filing of requests to proceed to election bars the Union from contending that no fair election could be held or that a bargaining order is warranted. Respondent cites no authority in support of this contention, and I find it without merit as there is nothing inconsistent in the Union's pursuing representation through election procedures and "then filing a refusal-to-bargain charge after the election is lost because of the employer's unfair labor practices." *Gissel*, supra at fn. 34.

[46] The critical period during which the parties' conduct will be scrutinized for its impact on voters commences with the filing of the petition. *The National League of Professional Baseball Clubs*, 330 NLRB 670 (2000); I*deal Electric Co.*, 134 NLRB 1275 (1961).

[47] There is no evidence or contention any of the lead men spoke to other employees about the union or election-related matters while in the polling area.

[48] NLRB v. Kentucky River Community Care, 121 S. Ct. 1861, 1867-1868 (2001).

[49] NLRB v. Kentucky River Community Care, supra at 1867–1868.

[50] I have not included the extensive hearsay evidence presented regarding lead man authority. Unless otherwise noted, I have discounted it as unreliable.

Miguel Sedano that an employee was a problem and he wanted him out. Miguel Sedano said he would see what he could do. Thereafter, the employee was transferred. Murad Murad said he intended to ask that one employee be laid off rather than another, which was done.[51]

Jerry Belton: inspector; filled in for Mr. Rogers when absent, which regularly included the Saturday night shift but did not possess Mr. Roger's authority. When substituting for Mr. Rogers, Mr. Belton assigned employees to machines and jobs from a prepared assignment list provided by Miguel Sedano or Mr. Conley. He helped employees read blueprints and complete jobs and checked employees' work. At the end of shift, Mr. Belton locked up the facility. Mr. Belton asked employees to go home if there was no additional job to assign, normally saying, "I don't have any work available for you right at the moment . . . I will call the foreman and find out if there's anything else or do you want to go home." Occasionally, Mr. Belton was called in as a witness when an employee was disciplined since, as inspector, he was generally available.

Albert Viramontes: day shift welding lead man; machinists went to him if they needed a part welded whereupon he assigned the part to a welder.[52] Mr. Viramontes gave his opinion of applicant resumes to Mr. Conley and also told him if employees worked well or had trouble. Evidence was presented that Mr. Viramontes opined that an employee who had sent Mr. Slater an email critical of supervisors and employees should be fired, and the employee was fired. There is no evidence, however, that Respondent considered Mr. Viramontes's opinion in firing the employee.

Milad Murad: supervised employees who worked on vertical turret machines and ran jobs himself; with Miguel Sedano, he prioritized job assignments,[53] assigned work, showed employees what to do, gave advice, answered employee questions regarding what machine to use, other work matters and details, and helped employees as needed. He was heard to tell Miguel Sedano that Respondent needed to get rid of an employee who made too many mistakes, and the employee was laid off.[54]

Hyun Kun Lee: day shift NC mill lead man; oversaw the work of two mill machines and ran machines himself. Employees asked him for help or advice, and he demonstrated how jobs should be done.

It is true that the above lead men assign work to the employees they lead. However, that alone does not establish supervisory authority. As the Board has consistently stated, "[Work] assignment must be done with independent judgment before it is considered to be supervisory under Section 2(11)." *McGraw-Hill Broadcasting Co.*, 329 NLRB 454, 459 (1999). There is no evidence that any employee direction by the six lead men demonstrated "the exercise of independent judgment [rather than the] . . . routine decisions typical of lead men. . . ." *Arlington Electric*, above at p. 75. Assessment of employee skills, such as that made by Jesus Sedano and Milad Murad, without more, is not indicia of supervisory status. *Williamette Industries, Inc.*, 336 NLRB 743 (2001). Recommendation of discipline, such as made by Milad Milad and Albert Viramontes, does not establish supervisory authority unless evidence shows the recommendations were effective, that is Respondent followed them. *MJ Metal Products*, 325 NLRB 240 (1997). There is no such evidence here. Additionally, the mere ability to report employee problems to higher management does not confer supervisory status. *Passavant Health Center*, 284 NLRB 887, 892 (1987). The party asserting supervisory status carries the burden of proving it. *Kentucky River Community Care, Inc.*, 121 S. Ct. 1861, 1866–1867 (2001); *Dean & Deluca New York, Inc.*, 338 NLRB No. 159, at slip op. 2 (2003) ("The party asserting [supervisory] status must establish it by a preponderance of the evidence [citations omitted]"). Petitioner has not met its burden of showing that the above lead men were supervisors at any relevant time hereto. Accordingly, their conduct in entering the polling area to vote in the election was not objectionable. I recommend Objection 1 be overruled.

Objection 2: . . . [S]upervisor Cliff Conley and [consultant and agent] Eli Sandoval . . . [stood] . . . where employees exited the plant on their way to the polling place. Conley had a Sony digital camera around his neck capable of taking not just still pictures but also videos. Conley and Sandoval stopped, accompanied, and talked to employees while the employees were on their way to the polling place. Conley . . . surveilled . . . employees in the stipulated bargaining unit.

On the day of the election, Conley wore a camera around his neck to record, if necessary, problems with demonstrators gathered in the company's driveway.[55] At 5:30 a.m. the morning of the election, he greeted employees and union supporters gath-

[51] This evidence does not create a reasonable inference that Murad Murad effectively recommended the transfer or the layoff.

[52] Viramontes testified that Conley gave out the welding work. I find, however, that Viramontes also assigned work.

[53] The evidence as prioritization was that Miguel Sedano informed Milad Murad what jobs needed to be done; Milad Murad told Miguel Sedano what machines were available, and Miguel Sedano decided to which machine a job would be assigned.

[54] This evidence does not create a reasonable inference that Milad Murad effectively recommended the layoff.

[55] I credit Conley's denial that he took any pictures or even turned the camera on. Hays saw what he believed to be a camera flash out of the corner of his eye and observed Conley shift the camera. A nonemployee bystander told Hays that Conley was taking pictures. Hays' testimony is based on his inferential perceptions and hearsay, which I consider unreliable.

ered at the entrance gate, saying, "Today we'll know; today it is finally over." During the course of the day, Conley directed employees exiting the shipping and receiving bay of Building 1 to the polling area in a separate building, a distance of approximately 176 feet. At about 6 a.m., Burnett told Conley that he was illegally intimidating employees; Conley did not respond and continued to direct employees to the polls. Occasionally, Mark Slater, Respondent's president, Bechtol, and Sandoval joined him. Conley only spoke to employees to direct them to the polls.

No evidence was presented, and it seems unlikely, that any employee needed direction to the polling area, which was in a building adjacent to employees' work places. The Board has held the "continued presence of the Employer's president at a location where employees were required to pass in order to enter the polling place was improper conduct[,]" which "interfered with employees' freedom of choice in the election [footnotes omitted]." *Performance Measurements Co.*, 148 NLRB 1657, 1659 (1964). While there is no objectionable conduct in Conley's merely carrying a camera, I conclude his continued presence where employees must pass by him to reach the polling area was improper. While Respondent stresses that Conley's distance from the polling area entrance was at least 150 feet, it is not the distance but the fact that employees had to pass by him that is significant. Accordingly, I recommend Objection No. 2 be sustained as to that conduct.

Objection 3 (as modified): . . . Employee Hernandez was given a raise. . . .

Frederico Hernandez received a raise about 1 month prior to the election. His work duties had earlier changed to include pressure testing (a higher paid job) while his deburrer work decreased. He requested and was granted a wage increase commensurate with his added job responsibilities. Accordingly, the Employer's granting him a raise was not objectionable. I recommend Objection 3 be overruled.

Objection No. 4: Days before the election, the employer reduced the hours of stipulated bargaining unit employee Marcelo Pinheiro in retaliation for his union activities. . . .

In conformity with my conclusions above, I find the evidence does not support this objection. Accordingly, I recommend Objection No. 4 be overruled.

Objection No. 5: Before the election, employee Marcelo Pinheiro was given a written warning . . . to retaliate against him for his union activities.

In conformity with my conclusions above, I find the evidence supports this objection. Accordingly, I recommend Objection No. 5 be sustained.

Objection No. 9: Before the election, and during the critical period, the employer . . . removed union literature from normal posting placed where employees are allowed to post papers concerning matters of personal, nonwork related and work-related matters, thereby imposing [a] discriminatory standard for union propaganda.

In conformity with my conclusions above, I find the evidence supports this objection. Accordingly, I recommend Objection No. 9 be sustained.

Petitioner's Objections Nos. 3, 5, and 9 are meritorious and constitute objectionable conduct affecting the results of the representation election held on March 6. In light of my findings with regard to the appropriateness of a bargaining order herein, I recommend Case 31–RC–8202 be severed from the unfair labor practice cases and remanded to the Regional Director for appropriate action consistent with the bargaining order.

CONCLUSIONS OF LAW

1. Respondent violated Section 8(a)(3) and (1) of the Act by

(a) Discriminatorily issuing written disciplinary notices to Timothy Hays and Walter Reddoch.

(b) Discriminatorily discharging Timothy Hays and Walter Reddoch.

(c) Discriminatorily issuing written disciplinary notices to Marcelo Pinheiro.

2. Respondent violated Section 8(a) (1) of the Act by

(a) Impliedly and coercively telling an employee that Respondent had retaliated against employees by reducing employees' hours.

(b) Threatening an employee with unspecified reprisals by telling him he would lose by supporting the Union.

(c) Discriminatorily prohibiting the posting of prounion literature.

3. The following unit of Respondent's employees is appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production, maintenance, shipping and receiving employees and programmers employed by Respondent at its facility located at 1720 Bon View, Ontario, California.

4. The Union has been at all times since January 23, and is, the exclusive bargaining representative of the employees in said unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. The unfair labor practices set forth above affect commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

6. Respondent did not engage in any unfair labor practices other than those found above.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent having discriminatorily discharged Timothy Hays and Walter Reddoch, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The recommended Order will also provide that Respondent bargain in good faith with the Union as the exclusive collective bargaining representative of the above-described unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[56]

ORDER

The Respondent, Allied Mechanical, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging any employee for supporting United Steelworkers of America, AFL–CIO–CLC (the Union) and to discourage employees from engaging in these activities.

(b) Disciplining any employee for supporting the Union.

(c) Discriminatorily prohibiting the posting of prounion literature.

(d) Impliedly and coercively telling any employee that Allied Mechanical, Inc. (the Employer or the Company), had retaliated against employees by reducing employees' hours.

(e) Threatening any employee he will lose by supporting the Union.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production, maintenance, shipping and receiving employees and programmers employed by Respondent at its facility located at 1720 Bon View, Ontario, California.

(b) Within 14 days from the date of this Order, offer Timothy Hays and Walter Reddoch full reinstatement to their former jobs or, if the job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make Timothy Hays and Walter Reddoch whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(d) Expunge from its files any reference to Timothy Hays and Walter Reddoch's unlawful written discipline and discharges and thereafter notify them in writing that this has been done and that the discipline and discharges will not be used against them in any way.

(e) Expunge from its files any reference to Marcelo Pinheiro's unlawful written discipline and thereafter notify him in writing that this has been done and that the discipline will not be used against him in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Ontario, California copies of the attached notice marked "Appendix."[57] Copies of the notice, on forms provided by the Regional Director for Region 31 after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since January 23, 2003.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 31–RC–8202 be severed from the other cases herein and remanded to the Regional Director for appropriate action consistent with the above bargaining order.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, San Francisco, CA December 19, 2003

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights.

[56] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[57] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the United Steelworkers of America, AFL–CIO–CLC (the Union) or any other labor organization.

WE WILL NOT issue written discipline to or otherwise discriminate against any of you for supporting the Union or any other labor organization.

WE WILL NOT discriminatorily prevent you from posting prounion literature.

WE WILL NOT tell any of you that we have retaliated against you for your support of the Union.

WE WILL NOT threaten any employee he will lose by supporting the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time production, maintenance, shipping and receiving employees and programmers employed by Respondent at its facility located at 1720 Bon View, Ontario, California.

WE WILL, within 14 days from the date of the Board's Order, offer Timothy Hays and Walter Reddoch full reinstatement to their former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Timothy Hays and Walter Reddoch whole for any loss of earnings and other benefits resulting from their discharges.

WE WILL**,** within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful written discipline and discharges of Timothy Hays and Walter Reddoch and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discipline and discharges will not be used against them in any way.

WE WILL**,** within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discipline issued to Marcelo Pinheiro and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discipline will not be used against him in any way.

ALLIED MECHANICAL, INC.